

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Park Appliance & Furniture, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Corporation Franchise Tax :
under Article 9-A of the Tax Law
for the Years 1969 - 1971. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of May, 1980, he served the within notice of Decision by certified mail upon Park Appliance & Furniture, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Park Appliance & Furniture, Inc.
919 Kensington Ave.
Buffalo, NY 14215

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
16th day of May, 1980.

Joanne Knapp

J. Valby

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Park Appliance & Furniture, Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9-A of the Tax Law :
for the Years 1969 - 1971. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of May, 1980, he served the within notice of Decision by certified mail upon Anthony J. Paliwoda the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Anthony J. Paliwoda
8880 Sheridan Ave.
Buffalo, NY 14221

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 16, 1980

Park Appliance & Furniture, Inc.
919 Kensington Ave.
Buffalo, NY 14215

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Anthony J. Paliwoda
8880 Sheridan Ave.
Buffalo, NY 14221
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PARK APPLIANCE & FURNITURE, INC. : DECISION
for Redetermination of a Deficiency or :
for Refund of Franchise Tax on a Business :
Corporation under Article 9-A of the Tax :
Law for the Fiscal Years Ending March 31, :
1969, 1970, and 1971. :

Petitioner, Park Appliance & Furniture, Inc., 919 Kensington Avenue, Buffalo, New York 14215, filed a petition for redetermination of a deficiency or for refund of franchise tax on a business corporation under Article 9-A of the Tax Law for the years 1969, 1970 and 1971 (File No. 19766).

A formal hearing was held before Alan R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on May 18, 1978 at 1:15 P.M. Petitioner appeared by Anthony J. Paliwoda, accountant. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a refund of franchise tax, based on a carryback to 1969, 1970 and 1971 of a net operating loss which was incurred in 1972.

FINDINGS OF FACT

1. Petitioner, Park Appliance & Furniture, Inc., filed its corporate franchise tax report for the fiscal year ending March 31, 1972 on September 15, 1972.

2. Petitioner's report was originally due on June 15, 1972. However, it timely filed an Application for Automatic 3 Month Extension for Filing Tax

Report together with a check in the amount of \$908.00 thereby extending the time to file until September 15, 1972.

3. Petitioner seeks a refund of franchise taxes paid and reported on September 15, 1972, based on the carryback of a net operating loss incurred in 1972 to its fiscal years ending March 31, 1969, 1970 and 1971. The amount claimed as a refund is \$1,670.00, plus interest.

4. The Audit Division denied the claim for refund by letter dated September 3, 1975, on the grounds that the claim was not timely.

CONCLUSIONS OF LAW

A. That section 1087(d) of the Tax Law provides in pertinent part:

"Overpayment attributable to net operating loss carry back. - A claim for credit or refund of so much of an overpayment under article nine-a as is attributable to the application to the taxpayer of a net operating loss carry back shall be filed within three years from the time the return was due for the taxable year of the loss,...".

B. That Black's Law Dictionary (4th Edition, West Publishing Company) defines "due date" as:

"Time appointed or required for filing a tax return, and in the event of an extension of time to file return, is the date to which period for filing is extended."

C. In numerous sections and sub-sections, the New York State Tax Law uses the phrase "due date" in conjunction with the phrase "as determined without any regard to any extension of time granted to the taxpayer," or a phrase similar thereto.

The failure of section 1087(d) to include that limiting phrase creates an ambiguity.

D. Where a tax statute is ambiguous, the language must be construed in favor of the taxpayer and against the taxing authority. Matter of Grumman Corp. v. Board of Assessors, 2 N.Y.2d 500, 161 N.Y.S.2d 393 (1957); Metropolitan Convoy Corp. v. City of New York, 2 N.Y.2d 384, 390, 161 N.Y.S.2d 31 (1957)

and Matter of Suffolk County Loan v. Bragliani, 5 N.Y.2d 579, 584, 186 N.Y.S.2d 602 (1959).

E. That petitioner filed its claim within the statutory period, as computed by including the extension of time granted to it; therefore, said claim was timely filed. Matter of United Artists Corp., State Tax Commission, November 16, 1979.

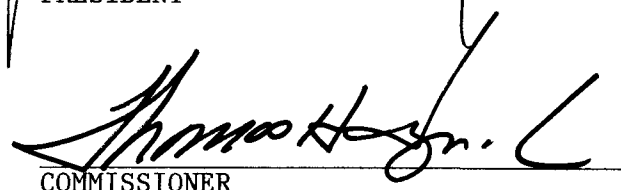
F. That the petition of Park Appliance & Furniture, Inc. is granted. The Audit Division is hereby directed to refund the sum of \$1,670.00 together with such interest as may be lawfully owing.

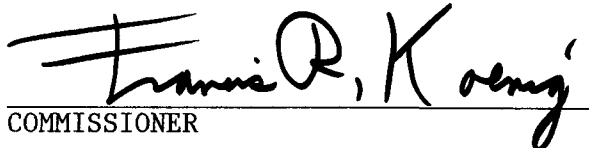
DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER